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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 92-263

Consumer Protection and
Customer Service

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SUMMARY

The Commission should adopt the NCTA customer service standards under Section 632 of the Act. The NCTA Standards have been widely implemented by cable operators. Adoption of different standards would require cable systems yet again to adjust their customer service programs, with the attendant hardware, software, personnel and other costs that ultimately would be borne by consumers. Such costs should be avoided because another set of customer service standards merely would set nominally different service thresholds, and likely would not result in measurable increases in consumer satisfaction.

The only way to ensure that all subsections of Section 632 have meaning is for the Commission to find that franchise authorities may impose standards stricter than the Commission's only where: 1) the cable operator and the franchise authority agree to stricter standards; or 2) a state or local law of general application imposes stricter standards.

The Commission's standards are not self-executing, but must be adopted by franchise authorities. Time Warner does not object to the Commission's proposal in the Notice that franchise authorities may adopt the standards at any time.

Section 632 does not confer independent power on franchise authorities to adopt new enforcement mechanisms. Therefore, franchise authorities must enforce the standards pursuant to: 1) mechanisms mutually agreed upon between the franchise authority and the operator; 2) existing franchise mechanisms; or 3) as part of the existing renewal provisions in 47 U.S.C. 546.

BEFORE THE
Federal Communications Commission **RECEIVED**
WASHINGTON, D. C.

JAN 11 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Implementation of the)	
Cable Television Consumer)	
Protection and Competition)	MM Docket No. 92-263
Act of 1992)	
)	
Consumer Protection and)	
Customer Service)	

COMMENTS OF TIME WARNER ENTERTAINMENT COMPANY, L.P.

Time Warner Entertainment Company, L.P. ("Time Warner") respectfully submits its comments in the above-captioned proceeding.¹ Time Warner is a partnership, the majority of which is indirectly owned and fully managed by Time Warner, Inc., a publicly traded Delaware corporation. Time Warner is comprised principally of three unincorporated divisions: Time Warner Cable, the second largest operator of cable television systems nationwide; Home Box Office, which operates pay television programming services; and Warner Bros., a major producer of theatrical motion pictures and television programs.

I. Introduction

During the 1980's the cable industry experienced rapid service and technological growth. In 1980, there were approximately 4,225 cable systems, and the industry served

¹ Notice of Proposed Rulemaking in MM Docket No. 92-263, FCC 92-541 (rel. December 11, 1992) ("Notice").

approximately 16 million subscribers. By 1990, 9,575 systems served over 50 million subscribers.² The nature of cable service also changed. Cable operators began to offer multiple tiers of service, pay-per-view, remote controls and other enhancements. Naturally, these changes sometimes created temporary customer service problems as the industry sought to adjust to its dynamic growth.

On its own initiative, the industry undertook a rigorous evaluation of customer service. The result was the "Recommended Cable Industry Customer Service Standards" issued by the National Cable Television Association in 1990 ("NCTA Standards" or "Standards").³ These comprehensive Standards address all aspects of customer service, including: 1) office and telephone availability; 2) installations, outages and service calls; and 3) communications, bills and refunds.

In the two years since their issuance, Time Warner's cable systems have adopted, and the vast majority of them now meet the NCTA Standards. Customer service has clearly improved.

It is important that the Commission consider this history in construing the customer service provisions in Section 8 of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act").⁴ Section 8 contains a fundamental inconsistency.

² See 59 Television and Cable Factbook, Cable and Services C-388 (1991).

³ National Cable Television Association, "Recommended Cable Industry Customer Service Standards" (February 14, 1990).

⁴ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

On the one hand, it allows cable operators to satisfy their customer service obligations by meeting the Commission standards (if they are adopted by the franchise authority). On the other hand, some apparently construe it to permit franchise authorities to impose more stringent standards. The Commission must adopt customer service standards that reconcile this apparent inconsistency. In doing so, it should be guided by the undisputed fact that the cable industry has already implemented -- at significant expense -- rigorous, comprehensive customer service standards.

The legislative history of the Act directs the Commission to consider, and permits the Commission to rely upon, the NCTA Standards. Therefore, any inconsistency in Section 8 should be reconciled by reliance on the NCTA Standards. Time Warner believes that the Commission can only do this by: 1) adopting the NCTA Standards; and 2) permitting franchise authorities to exceed those Standards only in limited circumstances.

II. The Commission Should Adopt the NCTA Customer Service Standards

The language and legislative history of the Act, as well as public policy considerations, should lead the Commission to adopt the NCTA Standards as the federal customer service standard. The

Commission has authority to adopt the NCTA Standards.

- A. The Commission Should Adopt the NCTA Customer Service Standards, Which Have Been Widely Adopted and Proven Successful, as the Federal Standards

Time Warner Cable serves about 6.9 million subscribers on a managerial basis (including partially owned but managed operations). Approximately 6.7 million subscribers (over 97 percent of the total) are currently served by systems that have been certified under the NCTA Standards. Although Time Warner Cable has always devoted considerable resources to customer service, implementing the NCTA Standards was, and remains, a costly process. The Standards required, among other things, hiring and training additional customer service personnel, purchasing new telephone systems, upgrading computer systems, and hiring more service/install technicians and trucks to support technicians. For example:

- o Time Warner's Houston cable system added 10 new customer service representatives and a new \$225,000 telephone system to better serve customers and to more accurately measure performance versus the Standards.

- o In its Milwaukee system, Time Warner upgraded its computer system at a cost of \$280,000, hired more technicians at a cost of \$170,000, and added service trucks and more customer service representatives to better serve customers and to more

accurately measure performance versus the Standards.

- o Time Warner's Indianapolis division estimates that the incremental costs for meeting the NCTA Standards is approximately \$135,000 per year (\$70,000 in additional staffing costs; \$10,000 in additional vehicle costs; and \$55,000 to implement its outage reduction initiatives).

- o In its Raleigh-Durham system, the following investments have been made to meet the NCTA Standards: increased customer service headcount by 12 (a 28% increase) at an annual cost of \$240,000; increased service technical staff by 5 (a 16% increase) at an annual cost of \$125,000; installed a new phone system in Durham at a cost of \$158,000; and converted to a new computer system at a capital cost of \$715,000, with additional software and conversion costs of over \$150,000.

This level of investment, coupled with adoption of the NCTA Standards, has created a very positive customer service record for Time Warner. For example, in October 1992, Time Warner Cable's American Television and Communications Corp. systems⁵ received 2,463,086 telephone calls from customers. The average rate at which callers experienced a busy signal was 0.4%. The average answer time was 13.5 seconds. During that same month,

⁵ The numbers and percentages expressed in this paragraph relate to systems owned and/or managed by ATC, which serves approximately 5 million subscribers. Time Warner recently combined the operations of ATC with Warner Cable to form Time Warner Cable. Although comparable numbers and percentages are not available from the Warner Cable systems, Time Warner believes that the performance numbers would not materially vary from the performance numbers expressed herein.

Time Warner systems scheduled 238,936 installations and completed 99.6% of them within seven business days. Time Warner systems scheduled 176,049 service calls in October. The systems completed 78.7% of those calls within 24 hours and 97.4% within 36 hours.

The NCTA Standards have been broadly endorsed outside the cable industry. The legislative history of the Act reflects substantial Congressional support for the Standards. For example, one member of Congress found that the cable industry's steps "to clean up its own house [by formulating and adopting the NCTA standards] should be welcomed by the city franchisers, should be welcomed by people in the community, and should be welcomed by Members of Congress."⁶ Local municipal officials have also praised the Standards. Both the National League of Cities and the U.S. Conference of Mayors "welcome[d] these standards," and praised the industry for recognizing its customer service difficulties.⁷

⁶ See Cable Television Regulation (Part I): Hearings Before the Subcomm. on Telecommunications and Finance of the House of Representatives Comm. on Energy and Commerce, 101st Cong., 2d Sess., (1990) ("Cable TV Reg. 1990 House Hearing") (statement of Rep. Matthew J. Rinaldo at 5). See also (statements of Rep. Don Ritter at 9; Rep. Dan Schaefer at 12); H.R. Rep. No. 628, 102nd Cong., 2d Sess. 105 (1992) ("House Report"); 138 Cong. Rec. S658 (daily ed. January 30, 1992) (statement of Sen. Tim Wirth); 138 Cong. Rec. S734 (January 31, 1992) (statement of Sen. Richard Shelby).

⁷ See Cable TV Reg. 1990 House Hearing, supra note 6 (joint statement of John L. Hanks, Dir. of Bureau of Franchises for New York City, the National League of Cities and the U.S. Conf. of Mayors at 217-219); see also (statement of Saul N. Ramirez, Jr., mayor pro tem, city of Laredo, TX at 158).

To the extent the legislative history of the Act contains criticism of the industry's customer service record, that commentary focuses on problems that arose before the full-scale implementation of the NCTA Standards. By contrast, the legislative history after adoption of the Standards is more positive.⁸

The Commission should not adopt rules under Section 8 that alter this vastly improved customer service landscape. Cable operators have spent two years adjusting to the NCTA Standards and the definitions contained therein. To require cable operators yet again to adjust their comprehensive customer service programs to implement a new set of standards would be counterproductive. Adoption of different standards would not likely result in measurable increases in actual consumer satisfaction. Instead, such standards merely would set nominally different service thresholds and thereby impose unnecessary costs, in contravention of the Commission's obligation to avoid regulations that "would impose an undue economic burden on cable

⁸ For positive references to the Standards, see supra notes 6 and 7. See also Cable TV Consumer Protection Act of 1991: Hearings on S. 12 Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science, and Transportation, 102nd Cong., 1st Sess. (1991) (statement of Sen. Daniel K. Inouye at 1-2) ("[t]he majority of cable operators provide good service at reasonable rates") ("S. 12 Senate Hearing"); Cable TV Consumer Protection Act of 1989: Hearings of S. 1880 Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science and Transportation, 101st Cong., 2d Sess. (1990) (statement of Sen. Bob Packwood at 6-7) (service problems not a big issue, at least in Oregon) (the "S. 1880 Senate Hearing"). For references which highlight problems occurring before full implementation of the NCTA standards, see House Report at 34-35.

systems."⁹

However, Time Warner would not oppose administrative definitional clarifications to the NCTA standards that the Commission believes are appropriate. In fact, Time Warner would work with the Commission to develop such clarifications.

In the Notice, the FCC asks whether its customer service standards should vary depending on the size of the cable system. Time Warner supports the approach in the NCTA Standards which recognizes that in small systems (less than 10,000 subscribers) measurement of compliance with some standards will not be cost effective and, therefore, should not be required.

B. The Commission Has the Authority to Adopt the
NCTA Customer Service Standards

The Commission clearly has authority to adopt the NCTA Standards as the federal customer service standard.¹⁰ The fact that Subsections 632(b)(1)-(3) mandate that the Commission address the same categories covered by the NCTA Standards is persuasive evidence that Congress intended the Commission to place heavy emphasis on the NCTA Standards. This position is further supported by the House Report, in which Congress stated

⁹ See Section 601(6) of the Communications Act of 1934, 47 U.S.C. Sec. 521(6) (1992).

¹⁰ Time Warner supports the Commission's proposal to limit the scope of federal standards solely to those topics addressed in Subsection 632(b)(1)-(3). See Notice at note 13.

that "the Commission may use [NCTA's standards as] a benchmark in establishing customer service standards."¹¹ Thus, the Commission is free to rely upon and adopt the NCTA Standards when it establishes federal guidelines.

III. The Commission's Customer Service Standards Are Not Self-executing

In the Notice, the Commission seeks comment on whether the Commission standards are self-executing.¹² Time Warner believes the legislative history of the Act makes apparent that the standards are not self-executing. The Conference Report and the House Report contain identical language clarifying that Subsection 632(b) requires the Commission to establish customer service standards "which may be required in local cable franchises."¹³ Thus, Congress intended, as demonstrated by its choice of the word "may," which connotes discretion, that the franchise authority has the option of adopting the Commission's standards, but is not required to do so.

Section 632(a)(1) of the Act further supports the notion that the Commission's standards are not self-executing. Congress recognized that some franchise authorities that want to adopt the

¹¹ House Report at 105.

¹² Notice at para. 4.

¹³ H.R. Conf. Rep. No. 862, 102nd Cong., 2d Sess. 78 (1992) ("Conference Report"); House Report at 105 (emphasis added).

Commission standards might not have the power under the franchise to do so unilaterally. Therefore, it specifically included Subsection 632(a)(1), which is an enabling provision, permitting franchise authorities to adopt the Commission standards. Thus, as demonstrated in both the Act and the legislative history, it is clear that the Commission standards are not self-executing.

IV. Franchise Authorities May Adopt the NCTA Customer Service Standards At Any Time

In the Notice, the Commission states that the Act does not limit when franchise authorities may adopt customer service requirements.¹⁴ However, the Conference Report states that Subsection 632(a) "allows franchising authorities to establish and enforce, as part of a franchise, or franchise renewal, modification, or transfer, customer service requirements...."¹⁵ Thus, reading Subsection 632(a) in light of its relevant legislative history, it appears that franchise authorities are limited in their ability to adopt customer service requirements to times of issuance, renewal, modification, or transfer of a franchise.

However, Time Warner does not object to the proposal in the

¹⁴ Notice at para. 6.

¹⁵ Conference Report at 78 (emphasis added); see also House Report at 105 (Section 632(a) "allows franchising authorities to establish and enforce, as part of a franchise, including a modification, renewal, or transfer thereof, provisions for enforcement of customer service requirements...").

Notice¹⁶ that franchise authorities should be able to adopt the Commission's standards at any time. Time Warner's willingness to concede such an interpretation demonstrates its commitment to a cooperative approach to maintaining and improving customer service, yet also supports its strong view that franchise authorities, cable operators, and, most importantly, consumers will be best served by a uniform, national approach to customer service.

V. Franchise Authorities May Require Customer Service Standards That Exceed the Commission's Standards Only in Limited Circumstances

Section 632(b) of the Act requires the Commission to "establish standards by which cable operators may fulfill their customer service requirements."¹⁷ The plain language of this subsection allows a cable operator which meets the Commission standards to fully satisfy its customer service obligations. As a matter of policy, this construction of Subsection 632(b) makes sense. If each franchise authority could unilaterally impose customer service standards stricter than the Commission's, cable operators could be subject to thousands of different, often conflicting standards. Cable operators such as Time Warner would lose the economic efficiencies of dealing with a uniform standard

¹⁶ Notice at paras. 4,7.

¹⁷ 47 U.S.C. Sec. 552(b).

(e.g., purchase of equipment, personnel training, uniform internal measurement techniques). Ultimately, imposition of thousands of different local standards would make it difficult to maintain and improve customer service.

Some may argue that other provisions of Section 632, primarily Subsections (a)(1) and (c)(2), permit franchise authorities to impose customer service requirements that exceed the Commission standards. However, such an interpretation would render Subsection 632(b) meaningless. If Congress had intended franchise authorities to have the power to unilaterally impose standards that exceed the Commission standards, it would not have included Subsection 632(b) permitting cable operators to satisfy their obligations by meeting the Commission standards. Similarly, if franchise authorities were intended to have unilateral power, why did Congress include the sentence in Subsection 632(c)(2) permitting a franchise authority and a cable operator to agree on stricter standards?

As previously noted, Subsection (a)(1), read in light of Subsection (b), is an enabling statute allowing franchise authorities to adopt the Commission customer service standards. It does not confer independent authority to adopt stricter standards.

The FCC cannot read certain provisions out of the Act. It is a settled principle of legislative construction that administrative agencies should not interpret legislative provisions to have no meaning, particularly where, as here, there

is a reasonable alternative interpretation.¹⁸

Time Warner submits that the only way to reconcile Section 632 is to permit franchise authorities to exceed the Commission standards in only two circumstances:

1) where the franchise authority and the cable operator agree to stricter standards pursuant to Subsection (c)(2); and

2) where a municipal or state law or regulation of general applicability (i.e., applicable to all similarly situated industries, not just cable television) imposes stricter standards under Subsection (c)(2).¹⁹

This interpretation is reasonable based on the language of Section 632 and is consistent with the public policy goal of achieving customer service standards that can be efficiently and effectively implemented by cable operators. Also, coupled with the discussion below on enforcement, it recognizes the legitimate role of franchise authorities in ensuring adequate customer service. Any other interpretation of the various provisions of Section 632 would have the effect of impermissibly rendering some subsections meaningless.

¹⁸ See 73 Am. Jur. 2d Statutes Sec. 250 (1991).

¹⁹ There is precedent for this interpretation of Subsection 632(c)(2). California, for example, has such a customer service law. See Cal. Code Ann. ch. 427, sec. 1722 (1993). (Assembly Bill No. 3355, Section 13, 1992 Cal. ALS 427).

VI. Franchise Authorities Should Enforce the Commission's
Customer Service Standards Pursuant to Existing Enforcement
Mechanisms

In the Notice, the Commission inquires whether it has authority to enforce the customer service standards established pursuant to Section 632.²⁰ Time Warner believes Section 632 does not confer enforcement authority on the FCC. As noted above, the FCC standards are not self-executing, but only become effective when adopted by a franchise authority. Therefore, it is appropriate that the franchise authority should enforce the standards. This is only reasonable since it would be a tremendous administrative burden for the Commission to enforce customer service standards for thousands of local cable systems.

As noted, Section 632 permits franchise authorities to adopt the Commission's customer service standards. However, Section 632 does not confer independent power on franchise authorities to adopt new enforcement mechanisms. This is not surprising since a number of enforcement mechanisms already exist. Time Warner believes franchise authorities should be limited to enforcing the Commission's customer service standards pursuant to the following mechanisms:

- 1) enforcement procedures that already exist in franchises;
- 2) enforcement procedures that are mutually agreed upon by

²⁰ Notice at para. 7.

the franchise authority and the cable operator; or

3) the existing renewal provisions in 47 U.S.C. Sec. 546 that specifically permit franchise authorities to consider the "quality of the operator's service, including ... response to consumer complaints, and billing practices"²¹

It is also critical that the Commission make clear that its customer service standards are not a tool for micro-management of cable operations, but rather a means of assessing an operator's overall customer service performance. The standards should not be used to resolve individual cases in which a cable operator does not meet a particular customer service standard. An enforcement mechanism which focuses on individual instances of failure to meet a particular standard would create a serious administrative burden and significant costs in pursuit of the unattainable and illusory goal of customer service perfection. The volume of transactions a cable operator has with consumers, coupled with the complexity of cable technology and marketing and the inevitable instances of human error and miscommunication, makes it impossible to entirely eliminate customer service failures. Therefore, the standards should focus on ensuring an adequate level of customer service on a system-wide basis, not resolving disputes on a customer-by-customer basis.

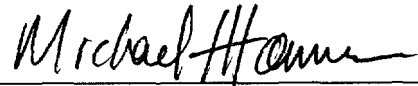
²¹ 47 U.S.C. Sec. 546(c)(1)(B).

VII. Conclusion

For these reasons, Time Warner respectfully recommends that the Commission adopt regulations to implement Section 8 of the Act consistent with the proposals contained herein.

Respectfully submitted,

Time Warner Entertainment
Company, L.P.

A handwritten signature in cursive script, reading "Michael H. Hammer", is written over a horizontal line.

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